

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

kp7299/MP  
October 6, 2021  
2:00 PM

\_\_\_\_\_  
IN RE:

Case No. 16-23135-SHL-13

DAVID FONSECA,

Hon. SEAN H. LANE

**NOTICE OF MOTION**

Debtor.  
\_\_\_\_\_  
\_\_\_\_\_x

PLEASE TAKE NOTICE, that upon the within application, Krista M. Preuss, Chapter 13 Trustee, will move this court before the Hon. Sean H. Lane, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, at 300 Quarropas, White Plains, NY 10601-4150, on the 6th day of October, 2021 at 2:00 PM, or as soon thereafter as counsel can be heard, for an order pursuant to 11 U.S.C. §1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the bankruptcy court and served upon the Chapter 13 Trustee, Krista M. Preuss, Esq., no later than seven (7) days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: White Plains, New York  
August 18, 2021

s/ Krista M. Preuss  
Krista M. Preuss, Chapter 13 Trustee  
399 Knollwood Road, Ste 102  
White Plains, NY 10603  
(914) 328-6333

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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\_\_\_\_\_  
IN RE: x

Case No: 16-23135-SHL-13

DAVID FONSECA,

Hon. SEAN H. LANE

**APPLICATION**

Debtor.  
\_\_\_\_\_  
x

TO THE HONORABLE SEAN H. LANE, U.S. BANKRUPTCY JUDGE:

KRISTA M. PREUSS, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor commenced this Chapter 13 case by filing a voluntary petition on August 19, 2016. Thereafter, KRISTA M. PREUSS was duly appointed and qualified as Trustee.
2. The Chapter 13 Plan will expire as of August 2021; however, the Debtor has failed to:
  - a. provide the Trustee with copies of the filed federal and state tax returns for the year(s) 2020, and refunds if applicable;
  - b. file with the Court a certification that all amounts payable under a domestic support obligation have been paid as required by 11 U.S.C. §1328(a); and
  - c. file with the Court evidence that the Debtor has completed an instructional course concerning personal financial management as required by 11 U.S.C. §1328(g)(1).
3. The deficiencies as stated above impede the Trustee's ability to administer this case and, therefore, is a default that is prejudicial to the rights of the creditors of the Debtor pursuant to 11 U.S.C. §1307(c)(1).
4. The foregoing constitutes cause to dismiss this Chapter 13 case within the meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an order dismissing this Chapter 13 case and such other and further relief as may seem just and proper.

Date: August 18, 2021  
White Plains, New York

/s/ Krista M. Preuss  
Krista M. Preuss, Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
IN RE:

Case No: 16-23135-SHL-13

DAVID FONSECA,

**CERTIFICATE OF SERVICE  
BY MAIL**

Debtor.

\_\_\_\_\_  
X

This is to certify that I, Michelle Puma, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

DAVID FONSECA  
147 CHALFORD LANE  
SCARSDALE, NY 10583

NORMA E. ORTIZ, ESQ.  
ORTIZ & ORTIZ, LLP  
32-72 STEINWAY STREET, SUITE 402  
ASTORIA, NY 11103

JORDAN S KATZ, ESQ.  
ATTORNEYS FOR MOVANT  
40 MARCUS DRIVE SUITE 200  
MELVILLE NY 11747

CHARLES A. HIGGS, ESQ.  
MCCABE, WEISBERG & CONWAY, P.C.  
145 HUGUENOT STREET SUITE 210  
NEW ROCHELLE NY 10801

This August 18, 2021  
s/Michelle Puma  
Michelle Puma, Clerk  
Office of the Standing Chapter 13 Trustee  
Krista M. Preuss, Esq.  
399 Knollwood Road, Suite 102  
White Plains, NY 10603  
(914) 328-6333

CASE NO: 16-23135-SHL-13  
Hon. SEAN H. LANE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

DAVID FONSECA,

Debtor.

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**NOTICE OF MOTION AND APPLICATION TO DISMISS CASE**

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KRISTA M. PREUSS, TRUSTEE  
399 KNOLLWOOD ROAD, STE 102  
WHITE PLAINS, NY 10603  
(914) 328-6333